IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(Crl.).No. 122 of 2007(S)

PETITIONER:

MANJESH BABU,AGED 25 YEARS,
SON OF BABU,THAMARASSERY COLONY,
KANJIRAM,KOTTAYAM.

BY ADV. SMT.KOCHUMOL KODUVATH

RESPONDENTS:
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1. SALIM, KOLLAMPARAMBIL,
LAKSHAM VEEDU,CHELIKKUZHI,
MUNDAKKAYAM P.O.,
KOTTAYAM.

2. SUB INSPECTOR OF POLICE,
MUNDAKKAYAM,
KOTTAYAM DISTRICT.

3. SUPEPERINTENDENT OF POLICE,
KOTTAYAM DISTRICT.

R1 & R2 BY GOVT.PLEADER SRI P.A.SALIM.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE PHOTOSTAT COPY OF THE ACKNOWLEDGEMENT OF RECEIPT OF MONEY DATED L226/2/2007 ISSUED BY THE SUB REGISTRAR, PONKUNNAM TO THE PETITIONER.

P.R.RAMAN & K.HEMA, JJ.

W.P.(CRL).NO.122 OF 2007

Dated this the 1st day of June,2007

JUDGMENT

Raman,J.

Petitioner is one Manjesh Babu. He filed this writ petition inter alia seeking for issuance of a writ of habeas corpus directing respondents 2 and 3 to rescue Shajitha P. Salim, the daughter of the lst respondent from the illegal confinement and restraint of the lst respondent and to produce her before this Court and set her free.

2. It is alleged in the writ petition that Shajitha P.Salim, who is the daughter of the lst respondent, is aged 22 years and was residing with him. The petitioner's mother's house is at Mundakkayam which is near to the house of the lst respondent. Petitioner claims to have got acquainted with the girl, Shajitha P. Salim and they are in love. They have decided to marry under the Special Marriage Act and notice is also given under the provisions of the said Act before the Marriage Officer/Sub Registrar, Ponkunnam on 26/2/2007. Ext.P1 is the true copy of the acknowledgement receipt of money issued by the Sub Registrar, Ponkunnam. Pursuant thereto, notice is also stated to have been published by the Marriage Officer by affixing a

copy thereof in a notice board of his office. On coming to know of the same it is alleged that the lst respondent asked his daughter not to marry the petitioner. It is alleged that she is under the illegal confinement and against the free will and consent.

3. This Court by order dated 15/5/2007 directed the 2nd respondent Sub Inspector of Police, Mundakkayam to conduct a discreet enquiry in the matter and ascertain the wishes of Shajitha P. Salim, who is under the illegal custody of the father, the first respondent, and forward a confidential report to this Court on or before 24/5/2007. As per the report filed by the 2nd respondent, we find that the girl has expressed her wishes to marry the petitioner with the consent of her parents as well. Pursuant thereto, notice was issued to the lst respondent with a date of appearance. Today, the alleged detenue was produced by the lst respondent-father. We inter acted with the alleged detenue, Shajitha P. Salim as well as the lst respondent. She told us that she wants to marry Manjesh Babu and to go with him. The father of the lst respondent, on the other hand, submitted that he has no objection to the marriage of his daughter with the petitioner provided the boy prepares to convert as a Muslim. Petitioner's mother's sister, Smt. Beena, is also present with her husband today. We have inter acted with them and we understand that the family of the petitioner is

prepared to accept Shajitha P. Salim and they are agreeable to the marriage of the petitioner with Shajitha P. Salim. They are prepared to take care of Shajitha P. Salim until her marriage is performed, in accordance with law.

4. Having considered the matter in detail and in the larger interest of the girl, the proper course open is to set her free, as she has already attained the age of 22 years. It is stated in the petition that Shajitha P.Salim is aged 22 years and she also stated so while questioned her. We asked the father of the girl as to what is the age of her daughter and he stated that she is aged 22 years. It is also admitted by him that the school certificates showing the age of the girl and other records are with him; but he has not produced the same before this Court. It was brought to our notice by the learned counsel for the petitioner that as per Section 14 of the Special Marriage Act the marriage has to be performed within a period three months ordinarily from the date on which the notice of the marriage has been given. But taking into consideration of the fact that Shajitha P. Salim was under the custody of his father and she had certain restrictions of movement and she is produced only today and in view of the fact that the matter was pending before this Court from 15/5/2007 till today, the period during which the matter was pending will stand excluded in

reckoning the three months' period as per Section 14 of the Special Marriage Act.

5. In the circumstances, we order that Shajitha P. Salim, being a major, she is set free. Respondents 2 and 3 shall give necessary protection, in case there is any threat to the life of the alleged detenu and a request is made in that behalf.

Writ petition is disposed of as above.

P.R.RAMAN,
Judge.

K.HEMA,
Judge.

kcv.